IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 831 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANA RATNA KATARRA

Versus

STATE OF GUJARAT

Appearance:

MR Budhabhatt for DR BHATT for Petitioner

Mr.B.D. Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.R.SHELAT

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant, original accused No.1, by filing this appeal under Section 374 of the Code of Criminal Procedure, 1973 ('Code' for short), has challenged the judgment and order dated August 13, 1990, passed by the learned Additional Sessions Judge, Godhra, in Sessions Case No. 40 of 1990, by which judgment and order, the appellant came to be convicted under Sections 302 of the Indian Penal Code and under Section 135 of the Bombay

Police Act, and sentenced to R.I. for life for offence under Section 302 of Indian Penal Code and R.I. for four months and fine of Rs.50/- in default R.I. for 15 days for the offence under Section 135 of the Bombay Police Act.

2. The prosecution case may be summarized as under:P.W.3, complainant, Kachhudiben, was residing with her husband, Magan Dita, at village Patia Dhuleta. The appellant and his brother Fata Ratna Katara happened to be uncles of deceased Magan Dita. The appellant and his brother Fata Ratna Katara were having suspicion that complaint, Kachhudiben, was a witch and, therefore, their family members and their cattle were falling sick. On the day of the incident, i.e. on October 2, 1989, the appellant, who was armed with bow and arrow and original accused no.2, Fata Ratna Katara, who was armed with stick, went to the house of deceased Magan Dita. At the relevant time, deceased Magan Dita, his wife, Kachhudiben and their son Sukha Magan were present at the house. The appellant and his brother Fata Ratan raised shouts and asked deceased Magan Dita and his wife Kachhudiben to come out of their house. They also uttered words that Kachhudiben was a witch and, therefore, they wanted to finish the deceased as well as his wife. On hearing shouts, Magan Dita followed by his wife and son, Sukha, came out of their house. Deceased Magan Dita told appellant and his brother Fata Ratna that they were making false allegations against her and if there was suspicion that his wife was a witch, then they should call a Bhawa. The appellant and his brother did not accede to the request made by deceased Magan Dita. At that time, appellant darted an arrow towards Magan Dita which pierced through the left side of his chest. On receiving injury, deceased Magan Dita, his wife and son, Sukha, ran towards field of Fata Ratna. The deceased sustained serious injuries on the left side of the chest and he fell down after running for few paces. The appellant chased Magan Dita and when he fell down in the field of Fata Ratna, the appellant took out the arrow from the chest of Magan Dita and the appellant and his brother Fata Ratna ran away from the place of incident. In the meantime, P.W.4, Limji Jahu Baberia, came at the place of the incident and the appellant gave a blow with the bow to Limji. It is also prosecution case that original accused No.2, Fata Ratna, had also given blows with stick to P.W.3, Kachhudiben. P.W.3, Kachhudi Maganbhai, had gone to Garbada Police Station where her complaint was recorded by PSI, I.K. Desai at 23.55 hrs. After lodging of the complaint of Kachhudiben, on the next day, inquest of dead body of Magan Dita was held and PSI, Mr. Desai, had drawn panchanama of place of

incident. After holding inquest, dead body of Magan Dita was sent for post-mortem to Dahod Hospital wherein P.W.1, Dr.Ramanbhai Maganlal Patel, performed postmortem. Clothes of deceased were seized under a panchanama. PSI, Desai, recorded statements of Sukha Magan and Limji Jahu and other witnesses. On October 5, 1989, at 12.45 hrs, the appellant presented himself before Garbada Police Station and he was arrested under arrest panchanama. On the same day, at around 17.30 hrs, original accused No.2, Fata Ratna, also presented himself before Garbada Police Station and he was also arrested under arrest panchanama. PSI, Desai, seized incriminating articles found from the place of incident, arrow which was recovered at the instance of the appellant and clothes of the deceased which were sent to the Forensic Science Laboratory for analysis. On completion of investigation, chargesheet came to be filed on July 15, 1990, against the appellant and original accused No.2, Fata Ratna in the Court of learned Judicial Magistrate, First Class, Dohad, for the offences punishable under Section 302 and 114 of the Indian Penal Code and Section 323 read with Section 114 of the Indian Penal Code against the appellant and the original accused No.2. As offence under Section 302 of Indian Penal Code is exclusively triable by a Court of Session, learned Judicial Magistrate, First Class, Dohad, committed the case to the Sessions Court, at Godhra, where it came to be numbered as Session Case No.40 of 1990.

3. Charge Exh.2 was framed against the appellants and original accused No.2, Fata Ratna, for offences punishable under Sections 302 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to the accused. They pleaded not guilty to the charge and claimed to be tried. The prosecution, in order to bring home guilt of the accused, examined following witnesses: (1) P.W.1, Ramanbhai Mangalbhai Patel Exh.15, (2) P.W.2, Abhesinh Jaysinh Exh.19, (3) P.W.3, Kacchudiben Maganbhai (complainant), Exh.21, (4) P.W.4, Limji Jahu Baberia, Exh.22; (5) P.W.5, Babulal Devnarayan Soni, Exh.23; (6) P.W.6, child witness, Sukha Magan, Exh.26, (7) P.W.7, Pratapsing Chandabhai, Exh.27 and (8) P.W.8, PSI Ishwarbhai Karamshibhai Desai at Exh.30. The prosecution led documentary evidence such as inquest panchanama, panchanama of place of offence, map of scene of offence, complaint lodged by Kachhudiben, to prove the case against the accused. After recording of evidence of prosecution witnesses was over, further statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the

accused denied the case of the prosecution and stated that they were falsely involved in this case.

4. Learned Sessions Judge, after appreciating evidence led by the prosecution and after hearing arguments of learned Public Prosecutor and learned counsel for the defence, concluded that (1) deceased Magan Dita died of homicidal death; (2) the injury sustained by deceased Magan Dita on vital part, i.e. on the chest, by darting of arrow by the appellant, was sufficient in the ordinary course of nature to cause death of deceased. (3) the appellant had selected vital part of body of the deceased for darting arrow; (4) there was motive behind committing the murder of Magan Dita as the appellant and his brother Fata Ratna had strong suspicion that complainant, Kachhudiben, was a witch; (5) appellant and his brother Fata Ratna were armed with bow, arrow and stick and had gone to the house of deceased Magan Dita to launch an attack on the deceased as well as on his wife Kachhudiben; (6) evidence of eye-witness, P.W.3, Kachhudiben Maganbhai, P.W.4, Limji Jahu and child witness, Sukha Magan was most reliable and trustworthy; (7) recovery of blood-stained arrow at the instance of the appellant corroborates the prosecution version that the appellant had darted arrow on the deceased and blood found in the arrow was of the blood group of deceased Magan Dita. On the abovereferred to conclusion, learned Additional Sessions Judge convicted the appellant under Sections 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act, and sentenced to R.I. for life for offence under Section 302 of Indian Penal Code and R.I. for four months and fine of Rs.50/- in default R.I. for 15 days for the offence under Section 135 of the Bombay Police Act, which is subject matter of this appeal.

5. Learned counsel for the appellant, Mr. Budhbhatti and learned Additional Public Prosecutor, Mr. B.D. Desai, have taken us through the entire evidence produced on record of this appeal.

6. Learned counsel for the appellant has vehemently submitted that the witnesses examined by the prosecution were highly interested and no independent witnesses, even though were present at the place of the incident, were examined. Learned counsel for the appellant further submitted that, had the deceased sustained serious injuries on his left chest, he would not have been in a position to run away towards the field of Fata Ratna and that too, which was at the distance of 500 paces from the place of incident. Learned counsel for the appellant

further submitted that, as per the prosecution case, the appellant and his brother, Fata Ratna, had suspected that complainant Kachhudiben was a witch and if, the prosecution version is to be believed, then they were to kill Kachhudiben rather than causing murder of Magan Dita. Learned counsel for the appellant further stressed that the evidence of eye-witness is highly doubtful and, therefore, benefit of doubt should be extended in favour of the appellant and the appeal deserves to be allowed.

7. Learned Additional Public Prosecutor, Mr. B.D. Desai, submitted that there was strong motive for committing murder of deceased Magan Dita because he had tried to protect his wife, against whom the appellant and his brother Fata Ratna had suspicion that she was a witch and their family members and cattle were falling sick frequently. Learned APP further stressed that presence of eye-witnesses was natural at the place of incident and there is no reason to disbelieve their evidence. It is submitted by learned APP that evidence of complainant is corroborated by the evidence of eye-witness, Sukha Magan and witness Limji Jahu. Learned APP further submitted that blood, which was found on the arrow, was found to be of the blood group of the deceased and that piece of evidence also supports the prosecution case that the appellant had darted arrow and caused murder of Magan Dita, and, therefore, the appeal be dismissed.

8. Evidence of P.W. 1, Dr.Ramanbhai M. Patel and post-mortem notes produced at Exh.16 amply proves that deceased died due to the injuries sustained on his left chest. Therefore, finding of the learned Additional Sessions Judge that the deceased died homicidal death is quite eminently just and proper. Submission of learned counsel for the appellant that evidence of P.W.3, Kacchudiben, is not reliable as she had tried to suppress the real occurrence of the incident, deserves to be rejected. We have carefully gone through the evidence of P.W.3, Kachhudiben, and, in our opinion, she had given correct and true picture of the incident. She had emphathetially deposed that, when the appellant and his brother Fata Ratna armed with bow and arrow and stick had approached their house raising shouts and calling them to come out, deceased followed by her and their son, Sukha Magan had come out. She deposed that the appellant darted arrow which pierced the left side of chest of her husband and original accused No.2, Fata Ratna, had given stick blow on her hand and at her back and, therefore, they ran towards the direction of field of Fata Ratna. She also deposed that after running few paces, the deceased had fallen down. The appellant had chased them

and when the deceased had fallen down the appellant had taken out the arrow from the chest of the deceased. After the incident, within few hours, she had lodged the complaint at Garbada Police Station. Complainant, Kachhudiben, was, searchingly, cross examined but, in our opinion, she had withstood the cross examination and her evidence in examination in chief has not been shaken.

9. The evidence of Kachhudiben is also amply corroborated by evidence of P.W.4, Limji Jahu Baberia. The witness had deposed that he had seen the appellant and his brother Fata Ratna carrying bow-arrow and stick respectively. The witness also deposed that he had seen appellant darting arrow towards the deceased and Fata Ratna giving stick blows on complainant, Kachhudiben. He also narrated that, on sustaining injuries, the deceased, the complaint and son Sukha had run towards the field of Fata Ratna. The witness deposed that, as the appellant had given a blow with the bow on him, and because of fear, he had run towards his house. This witness was also cross examined and we do not find that his evidence in examination in chief is shaken in any way.

10. The evidence of complainant, Kachhudiben, and Limji Jahu also gets support from the evidence of child witness, Sukha Magan, P.W.6. When the evidence of child witness, Sukha Magan was recorded, he was aged 13 years. When a young child is a witness, the first step for the judge to take is to satisfy himself that the child is a competent witness within the meaning of Section 118 of the Indian Evidence Act,1872. It is the duty of the Court to ascertain in the best way which it can, whether from the extent of his intellectual capacity and understanding the child witness is able to give a rational account of what he had seen, heard or done at a particular occasion or in other words the witness understands the duty of speaking truth or not. Competency of young children can be ascertained by putting a few questions to them in order to find out whether they are intelligent enough to understand what they had seen and afterwards inform the Court thereof. If the witness is found to be incapable of understanding the obligations of an oath or affirmation, he may be examined without an oath or affirmation, provided he is found to be a competent witness. The Supreme Court, in Rameshwar Kalyan Singh vs. State of Rajasthan, AIR 1952 Supreme Court 54, has ruled that, it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so,

that in some cases it may be necessary to reject the evidence altogether. Learned Additional Sessions Judge had interrogated the child witness before administering oath on him. The child witness replied to the questions put up by the Court and he understood the sanctity of the Court. P.W.6, Sukha Magan, had also given the true version of occurrence of the incident. He deposed that he was staying in his maternal uncle's house at village Ablode. He stated that there were holidays on Sunday and on account of Gandhi Jayanti, he had come to his parents' house. As per his evidence, the appellant and his brother, Fata Ratna, had come to his house raising shouts and both were armed with bow, arrow and stick. He deposed that at time of occurrence of the incident, because of Deep, which were lighted on account of Navratri festival, there was sufficient light. He also deposed that the appellant and Fata Ratna were uncles of his deceased father Magan Dita. The evidence of child witness disclosed that after sustaining injuries, the injured persons had run towards the field of Fata Ratna where his father had fallen down and succumbed to the injuries. He also deposed that the appellant had chased them and, when his father had fallen down, he had taken out the arrow and had run away. The witness also deposed that Fata Ratna had given blow with stick to his mother Kachhudiben, whereas the appellant had given blow with bow on witness Limji Jahu. In cross examination, some minor contradictions were brought out, but, in our opinion, it could not dislodge the version of the incident as given by the witnesses. We are of the view that the learned Additional Sessions Judge had not committed any error in placing reliance on the evidence of the above three witnesses.

11. The submission of learned counsel for the appellant that, even though as per the evidence of complainant, Kachhudiben, many persons had gathered at the place of the incident, but, those witnesses were not examined, does not deserve any merit. The prosecution, by examining three eye-witnesses, had amply established that the appellant had darted which pierced on the left side of the chest of the deceased, which had proved fatal. It is the quality of evidence led by the prosecution and not the quantity of evidence, which is to be borne in mind at the time of appreciating the evidence led by the prosecution. When the case put up by the prosecution was fully unfolded at the trial, it was not necessary to examine witness after witness so as to burden the record of the case. The appellant had strong motive to commit murder of deceased Magan Dita who was trying to prove innocence of his wife, Kachhudiben. The

appellant and his brother, Fata Ratna, armed with bow-arrow and stick, had gone to the house of deceased Magan Dita. The appellant had selected vital part of the body of the deceased for darting arrow. When the deceased, his wife, and his son Sukha Magan ran away from the place of incident, the appellant chased them and, after the deceased fell down in the field of Fata Ratna, the appellant took out the arrow and ran away. The arrow, which was used in commission of crime, was recovered at the instance of the appellant. The group of blood which was found on the arrow also tallied with the blood group of the deceased. This piece of evidence also supports the prosecution version that the appellant had darted arrow on the left side of chest of the deceased. The submission of learned counsel for the appellant that, in normal circumstances, if the deceased had sustained injuries and if complainant, Kachhudiben, was beaten by stick by Fata Ratna, then they would have run towards their house and not towards the field of Fata Ratna, does not deserve any merit. The house of deceased Magan Dita and houses of appellant and Fata Ratna were situated in the adjoining locality and, therefore, it was not advisable for the injured persons to run towards their house for safety. Therefore, in our view, the deceased and the injured persons had run towards the field of Fata Ratna to escape from further attack by the appellant and his brother Fata Ratna. In totality of appreciation of evidence and circumstances which emerge from the version of the prosecution witnesses, in our opinion, the learned Additional Sessions Judge has rightly convicted the appellant of the offences with which he was charged. Therefore, the appeal deserves to be dismissed.

For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. The conviction and sentence imposed on the appellant by the learned Additional Sessions Judge is hereby confirmed. The muddamal be disposed of as per direction given by the learned Additional Sessions Judge in the impugned judgment.

November 6, 2000 (M.H.Kadri, J.)

(H.R.Shelat, J)

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